

AGREEMENT NUMBER: \_\_\_\_\_

KENTUCKY WIC PROGRAM  
DRUG STORE VENDOR AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of October, 2003, by and between the Kentucky WIC Program and

\_\_\_\_\_,  
hereinafter referred to as the First Party, and \_\_\_\_\_

\_\_\_\_\_,  
hereinafter referred to as the Second Party;

WHEREAS, the First Party, in the exercise of its lawful duties, has determined upon the necessity of the performance of the following described service, to wit: In relation to the First Party's WIC Program (Special Supplemental Nutrition Program for Women, Infants and Children) to provide food to pregnant, breastfeeding and postpartum women, and infants and children (1-5 years of age) as authorized on food instruments issued by the First Party; and

WHEREAS, the Second Party is available and would be qualified to perform such function;

NOW, THEREFORE, it is hereby and herewith mutually agreed by and between the parties hereto as follows:

1. The Second Party agrees:

- (a) To comply with applicable Federal and State policies, procedures and regulations relating to the WIC Program;
- (b) To supply formulas requested by the First Party within **forty-eight (48) hours of the verbal request** as listed on Attachment A. Drug Stores are authorized for the purpose of providing special formulas that are not available to retail grocers;
- (c) To verify with the First Party any food instrument which appears to have been altered, defaced or mutilated before dispensing the food items;
- (d) To dispense only approved food items in the quantities and sizes which have been specified on the food instrument to authorized participants, parents, caretakers or proxies upon presentation of an authorized food instrument;
- (e) To honor food instruments only within the valid period specified on the food instrument (the period beginning with the "first day to use" and ending with the "last day to use" dates);
- (f) To accept WIC food instruments issued by any authorized Kentucky WIC Agency;
- (g) To dispense WIC food items to participants, parents or caretakers of an infant or child participant or proxies without requiring other purchases and accord such persons the same services given to other store customers;
- (h) To not redeem food instruments in whole or in part for cash, unauthorized foods,

- other items of value, as a credit for past accounts, or otherwise violate the WIC Program policies, procedures and regulations;
- (i) To accept and redeem food instruments only within the confines of the store and to not make home deliveries;
  - (j) To not issue “due bills,” “IOU’s,” “rainchecks” or similar types of instruments in lieu of WIC food items;
  - (k) To not charge participants for WIC food items dispensed in accordance with the terms of this Agreement;
  - (l) To not seek restitution from participants, parents, caretakers or proxies for food instruments which are rejected for payment;
  - (m) To submit to the First Party, within the time frame requested, a current price list;
  - (n) To not charge for food not authorized on the food instrument;
  - (o) TO RECORD, IN INK, THE ACTUAL PURCHASE PRICE (PAY EXACTLY) ONLY OF APPROVED FOOD ITEMS RECEIVED BY THE PARTICIPANT, PARENTS OR CARETAKERS OF INFANT OR CHILD PARTICIPANT OR PROXIES, AND THE DATE REDEEMED ON THE FACE OF THE FOOD INSTRUMENT PRIOR TO OBTAINING THE SIGNATURE OF THE PERSON REDEEMING THE FOOD INSTRUMENT;
  - (p) To display the prices of WIC foods on each item, or on the display case or shelf where those items are located;
  - (q) To charge the First Party the current retail market price or less. In no event shall food costs charged exceed the shelf price of the food provided. The shelf price is considered the current retail market price;
  - (r) To submit to the First Party the completed food instrument within thirty (30) days of the last valid date (“last day to use”) on the food instrument;
  - (s) To repay to the First Party any documented overcharges and to refund the First Party any payment previously made on improper or invalid food instruments;
  - (t) To send appropriate employees (such as the manager, pharmacist or head cashier) to training provided by the First Party and to keep appropriate employees informed of current policies, procedures and regulations pertaining to the WIC Program;
  - (u) To be accountable for actions of employees in the utilization of food instruments or provision of supplemental foods;
  - (v) To maintain inventory records and proof of purchase of WIC items for a period of at least six (6) months and to permit monitoring and inspection of store premises and all documents necessary to ensure compliance with this Agreement and State and Federal WIC Program rules, regulations and policies, as well as to respond to requests for corrective action;
  - (w) To provide access to food instruments negotiated the day of the monitoring visit, if requested, and to maintain and provide access to shelf price records and adequate inventory records to verify billings made for all WIC food items purchased at any time for a period of at least six months;
  - (x) To make available all appropriate documents and records pertaining to the WIC Program upon request by the First Party;
  - (y) To not collect sales tax on WIC food purchases; and
  - (z) To not physically or verbally threaten or abuse agents of the First Party.

2. The Second Party also agrees:

- (a) To comply with all policies and procedures developed for the operation of the automated food delivery system;
  - (b) To be responsible for assuring the vendor stamp, which will be issued by the First Party, is used in accordance with governing policies and procedures;
  - (c) To be responsible for any misuse of the vendor stamp (until the First Party has been properly notified) which results in a loss to the First Party;
  - (d) To not replicate the vendor stamp;
  - (e) TO RETURN THE VENDOR STAMP IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT OR UPON APPLICATION OF A SANCTION;
  - (f) To be responsible for obtaining and maintaining a Vendor Manual;
  - (g) To prohibit the use of self-scanning devices in the redemption of WIC food instruments; and
  - (h) To be responsible for safeguarding protected health, confidential and sensitive information of the WIC participants who redeem food instruments at the vendor's location in accordance with the Health Insurance Portability and Accountability Act of 1996. (HIPAA)
3. For the services as hereinafter set forth, the First Party agrees:
- (a) To authorize reimbursement through a centralized WIC bank account system established by the Cabinet for Health Services, to the Second Party at the Second Party's current retail market price;
  - (b) To authorize reimbursement through a centralized WIC bank account system established by the Cabinet for Health Services, to the Second Party within 60 days of receipt of a properly completed food instrument for the approved foods as listed in Attachment A to this Agreement and shall not authorize reimbursement for foods for which written notice of deletion has been received;
  - (c) To monitor the Second Party's performance under this Agreement and to inform the Second Party of the results thereof; and
  - (d) To provide the Second Party with training and written instructions on the Program's operations.
4. The First Party reserves the right to deny payment for any altered, defaced or mutilated food instruments or food instruments submitted for payment outside the allowable time frames.
5. In the event a claim is assessed against the Second Party after the food instrument has been paid, then the First Party may offset future payments to the Second Party for the amount of the claim **in addition** to applying the sanction as indicated in Administrative Regulation 902 KAR 4:040.
6. The period within the current State Fiscal Year during which this Agreement is in effect is from October 1, 2003 through June 30, 2004, provided, however, that this Agreement shall be automatically extended for the period July, 1, 2004 through September 30, 2004 unless the First Party notifies the Second Party, in writing, to the contrary thirty (30) days prior to July 1, 2004.
7. The parties hereby agree to comply with all appropriate Federal and State Civil Rights Laws and Regulations and state that they do not discriminate against any participant for reasons of race, color, national origin, age, sex or disability, Nondiscrimination

Regulations of the United States Department of Agriculture (7 C.F.R., Part 15), and Title VI of the Civil Rights Act of 1964 (P.L. 88-352).

8. The Second Party states that he is knowledgeable and aware that a vendor who commits fraud or abuse of the program is liable for prosecution under the applicable State, Federal, or local laws. The Second Party agrees and understands that, under 7 CFR 246.23, those who have willfully misapplied, stolen or fraudulently obtained Program funds shall be subject to a fine of not more than \$25,000 or imprisonment for not more than five years, or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one year, or both.
9. The Second Party agrees and understands that it is not the intent of either this Agreement or Administrative Regulation 902 KAR 4:040 to differentiate between intentional and unintentional overcharging or other Program violations and that, in addition to any sanctions imposed by the Cabinet under Administrative Regulation 902 KAR 4:040, the Second Party will repay to the First Party any documented overcharges and to refund the First Party any payment previously made on improper or invalid food instruments; whether overcharging is intentional or unintentional. The First Party does not have to provide the vendor with prior warning that violations were occurring before imposing sanctions.
10. Either party shall have the right to terminate this Agreement at any time upon thirty (30) days advance written notice served upon the other party by registered or certified mail; provided, however, that the First Party may terminate this Agreement immediately for cause upon fifteen (15) days written notice served upon the Second Party by registered or certified mail with return receipt requested. The first party may disqualify a vendor, or impose a civil money penalty in lieu of disqualification, for reasons of Program abuse. Civil money penalties will only be imposed for reasons of inadequate participant access. The First Party may use installment plans for collection of civil money penalties. If a vendor does not pay or only partially pays or fails to timely pay a civil money penalty assessed in lieu of disqualification, the First Party shall disqualify the vendor for the length of disqualification corresponding to the violation for which the civil money penalty was assessed.
11. The Second Party has a right to appeal a decision pertaining to denial of application to participate, vendor disqualification or other adverse action which affects participation during the agreement performance period in accordance with Administrative Regulation 902 KAR 4:040. Expiration or nonrenewal of an agreement with a vendor, disqualification of a vendor as a result of disqualification from the Food Stamp Program, and the First Party's determination regarding participant access is not subject to review. If the disqualification of the Second Party is reversed through administrative or judicial review, the First Party shall not be liable for the value of sales lost during the disqualification period.
12. In the event of a disqualification, withdrawal or an assessment of a civil money penalty of a vendor by the Food Stamp Program or any other United States Department of Agriculture (U.S.D.A.) Food and Nutrition Service (FNS) Program, the Second Party shall be disqualified from the WIC Program upon written notice by registered or certified mail with return receipt requested. The Second Party states that he is knowledgeable that disqualification from the WIC Program may lead to Food Stamp Program disqualification or Medicaid penalties. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program, however, a WIC Program disqualification

as a result of a Food Stamp Program civil money penalty for hardship is subject to administrative review.

13. In the event the Second Party is obligating more than one outlet, then all outlets shall be specified in Attachment B of the Kentucky WIC Program Drug Store Vendor Agreement.
14. In the event the Second Party fails to continue to meet the criteria for the selection of vendors during the term of this Agreement, the First Party will upon notice to the Second Party terminate or not renew this Agreement. Certain criteria for selection have specific disqualification periods. The period of disqualification for not pricing food items, failure to return the Price List, failure to supply formulas within forty-eight (48) hours of verbal request, or failure to attend training will be for a period of sixty (60) days. If at any time a second termination or nonrenewal is received for the same violation, the period of disqualification will be for a period of one hundred and twenty (120) days; for the third occurrence, one (1) year.
15. The First Party reserves the right to modify this Agreement at any time upon written notice to the Second Party.
16. THIS AGREEMENT IS NON-TRANSFERABLE AND SHALL BECOME VOID UPON CHANGE OF OWNERSHIP. THE VENDOR SHALL NOTIFY THE STATE AGENCY WHEN THE STORE CEASES OPERATIONS OR THE OWNERSHIP CHANGES.
17. THIS AGREEMENT DOES NOT CONSTITUTE A LICENSE OR PROPERTY INTEREST.
18. NEITHER THE FIRST PARTY NOR THE SECOND PARTY HAS AN OBLIGATION TO RENEW THIS VENDOR AGREEMENT. EXPIRATION OR NONRENEWAL OF AN AGREEMENT IS NOT SUBJECT TO APPEAL.
19. The State Agency will terminate this agreement if the State Agency identifies a conflict of interest as defined by applicable State laws, regulations and policies, between the vendor and the State Agency or its local agencies.
20. Renewal of this Agreement does not relieve the Second Party of any previous violations from any prior Agreements with the First Party or the Department for Public Health, which were in effect on or after October 1, 1999.
21. The State Agency will immediately terminate the agreement if it determines that the vendor has provided false information in connection with its application for authorization.
22. This agreement shall not become effective until approved by the Department for Public Health.

ATTACHMENT A  
KENTUCKY WIC PROGRAM DRUG STORE VENDOR AGREEMENT

The following food items are approved for the WIC Program in Kentucky:

## FORMULAS

A drug store must be able to supply within 48 hours of verbal request by agency staff any of, but not limited to, the following products:

Boost	Ensure Plus HN
Boost High Protein	Ensure Fiber with FOS
Boost Plus	Isocal
Boost with Fiber	Isocal HN
Enfamil AR/Enfamil AR LIPIL	Isocal HN Plus
Enfamil EnfaCare/Enfamil EnfaCare LIPIL with Iron	Kindercal
Enfamil Next Step Toddler/Enfamil Next Step LIPIL	Kindercal with Fiber
Enfamil Next Step Soy Toddler/Enfamil Next Step Prosobee LIPIL	Kindercal TF
Enfamil Premature 20/ Enfamil Premature LIPIL 20	Kindercal TF with Fiber
Enfamil Premature 24/ Enfamil Premature LIPIL 24	Nutren Junior
Enfamil Premature with Iron 20/Enfamil Premature LIPIL with Iron 20	Nutren Junior with Fiber
Enfamil Premature with Iron 24/Enfamil Premature LIPIL with Iron 24	Osmolite
Enfamil with Iron 24/Enfamil with Iron LIPIL 24	Osmolite HN
Enfamil 24	PediaSure/ PediaSure with Fiber
Ensure	Peptamen (Elemental and Oral)
Ensure High Protein	Peptamen Junior (Elemental and Oral)
Ensure Plus	Similac NeoSure/Similac NeoSure Advance with Iron
	Similac PM 60/40
	Similac Special Care with Iron 24/Similac Special Care Advance with Iron 24
	Tolerex
	Vital High Nitrogen
	Vivonex Plus
	Vivonex T.E.N

## INFANT CEREALS - 8 OUNCE BOXES ONLY

Dry infant cereal without the addition of fruit, formula or sugar

Beechnut      Gerber      Heinz

## INFANT JUICES - 4.0 OUNCE CONTAINERS ONLY

Beechnut      Gerber      Heinz

**NO** juice with iron, sugar, yogurt, or vegetables added

NOTE: This list of approved food items is subject to change. The First Party shall forward notification of such changes in writing to the Second Party.

## ATTACHMENT B

### KENTUCKY WIC PROGRAM DRUG STORE VENDOR AGREEMENT

When the vendor is obligating more than one outlet, then all outlets shall be specified in the Agreement. When more than one outlet is specified in the Agreement, an individual outlet may be added or deleted without affecting the remainder of outlets.

NAME	ADDRESS	MANAGER	VENDOR NUMBER
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FIRST PARTY:

SECOND PARTY:

\_\_\_\_\_  
Authorized Officer

\_\_\_\_\_  
Authorized Signature  
**(Owner or Corporate Representative)**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Please Type or Print Legibly  
Authorized Signature

\_\_\_\_\_  
Please Type or Print Legibly  
Corporate or Business Name of Second Party

APPROVED BY:

\_\_\_\_\_  
Authorized Official  
Department for Public Health  
Cabinet for Health Services  
Kentucky WIC Program

Date : \_\_\_\_\_

Vendor Number \_\_\_\_\_